IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 11327 of 2004(W)

AGAINST THE ORDER DATED 04/09/2003 IN EP.165/2001 IN OS.1361/1998 of II ADDL.M.C.,TRIVANDRUM

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PETITIONER:

V.VENUGOPALAN NAIR,
KADAMBARAVILA VEEDU, VATTIYOORKAVU,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.R.GOPU

RESPONDENTS:

RAMANI, R.S. NIVAS,
EZHALACODE, VILAVOORKAL P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.11327/04

APPENDIX

PETITIONER'S EXTS:

Ext.P1 - TRUE COPY OF ORDER IN EP.165/01 IN O.S.1361/98 DT.4.9.03 OF THE II ADDL. MUNSIFF'S COURT, THIRUVANANTHAPURAM.

Ext.P2 – TRUE COPY OF CERTIFICATE ISSUED FROM THE OFFICE OF THE DIRECTOR OF MUSEUMS AND ZOO, THIRUVANANTHAPURAM DT. 16.7.02

Ext.P3 – TRUE COPY OF SALARY CERTIFICATE ISSUED IN FAVOUR OF PETR. DT.4.11.03.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.11327 OF 2004

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DATED THIS THE 29TH MAY, 2007

J U D G M E N T

Ext.P1 order passed by the execution court directing arrest and detention of the petitioner on the basis that he has not paid the decree-debt in spite of sufficient means is under challenge in these proceedings under Article 227 of the Constitution of India. Mr.V.R.Gopu, learned counsel for the petitioner would submit that the finding of the court below that the petitioner is liable to be arrested is not based on any legal evidence. He submitted that it was conceded before the court below that the only source of income for the petitioner is the salary that he draws from the Museum Department and Ext.P2 certificate was produced before the court below which did not place any reliance on Ext.P2.

2. Mr.G.Sudheer, learned counsel for the respondent would submit that the court below was perfectly justified in ignoring Ext.P2 which does not even mention the precise amount which is received by the petitioner every month.

3. In this Court Ext.P3 salary certificate has been produced by the petitioner. Ext.P3 is dated 4.11.2003 and the same shows that the emoluments totally drawn by the petitioner as on that date is

Rs.4293/-. Obviously the amount has escalated by now to at least Rs.6000/-. The attachable portion of the petitioner's salary in terms of Section 60 of the Code of Civil Procedure should be around Rs.1500/- to Rs.1750/-. It is trite that the unattachable portion of the salary of a person cannot be reckoned as means for the purpose of ordering arrest under Section 51 of the Code.

4. Under these circumstances, I dispose of the Writ Petition itself issuing the following directions:-

Ext.P1 will be kept in abeyance by the court below on condition that the petitioner pays to the respondent, on the 15th of every month, at the rate of Rs.1500/- without fail. In the event of any default by the petitioner in making payments as above, Ext.P1 shall become operative and the learned Munsiff will ensure that the petitioner is arrested and detained in accordance with law.

No costs.

(PIUS C. KURIAKOSE, JUDGE)

tgl